

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input checked="" type="checkbox"/> COPY
MAR 30 2004	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	J DEPUTY

1 PAUL K. CHARLTON  
2 United States Attorney  
3 District of Arizona

3 SUE A. KLEIN  
4 Assistant U.S. Attorney  
5 Arizona State Bar No. 11253  
6 Two Renaissance Square  
7 40 N. Central Avenue, Ste. 1200  
8 Phoenix, Arizona 85004-4408  
9 Telephone: (602) 514-7500

6 BRUCE S. GELBER, Chief  
7 Environmental Enforcement Section  
8 Environment & Natural Resources Division  
9 U.S. Department of Justice

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF ARIZONA

11 United States of America,  
12 Plaintiff,

13 v.

14 John B. Knight, Jr.; Robert D. Brown;  
15 National Petroleum Marketing, Inc.;  
16 Sunwest Express, Inc.; and Navajo Trails,  
17 Inc.,

18 Defendants.

CV '04 0626 PHX JWS

COMPLAINT

18 The UNITED STATES OF AMERICA, by authority of the Attorney General of the United  
19 States, acting at the request of the Administrator of the United States Environmental Protection  
20 Agency ("EPA"), pursuant to Section 9006(a)(1) of the Resource Conservation and Recovery  
21 Act, 42 U.S.C. §6991e(a)(1), alleges as follows:

22 NATURE OF THE ACTION

23 1. This is a civil action to obtain civil penalties for past and on-going violations of  
24 Subtitle I of the Solid Waste Disposal Act, commonly known as the Resource Conservation and  
25 Recovery Act ("RCRA"), 42 U.S.C. §§6991 - 6991i, and the regulations promulgated under  
26 these statutory requirements. This action is being brought against the following owners and  
27 operators of an underground storage tank (UST) facility, a gas station, located within the Navajo  
28 Nation reservation in Tuba City, Arizona: JOHN B. KNIGHT, JR. (hereinafter "Knight"),

1 ROBERT D. BROWN ("Brown"), NATIONAL PETROLEUM MARKETING, INC., ("NPM"),  
2 SUNWEST EXPRESS, INC., ("Sunwest Express") and NAVAJO TRAILS, INC., ("Navajo  
3 Trails").

#### 4 JURISDICTION, VENUE AND AUTHORITY

5 2. This Court has jurisdiction over the subject matter of this action and the parties under  
6 28 U.S.C. §§1331, 1345, and 1355 and 42 U.S.C. §6991e(a)(1).

7 3. Venue is proper in this judicial district pursuant to 42 U.S.C. §6991e(a)(1) and 28  
8 U.S.C. §§1391(b) - (c) and 1395(a) because this action arises from violations of Subtitle I of  
9 RCRA and the implementing regulations promulgated thereto, the violations occurred in this  
10 District and because the defendants each do business in this District and/or are found within this  
11 District.

12 4. The United States Department of Justice has authority to bring this civil enforcement  
13 action pursuant to 28 U.S.C. §§ 516, 519 and 42 U.S.C. § 6991e.

#### 14 PLAINTIFF

15 5. The United States of America is acting through the Attorney General of the United  
16 States and on behalf of the United States Environmental Protection Agency.

#### 17 DEFENDANTS

18 6. Knight is a "person" within the meaning of RCRA Section 9001, 42 U.S.C. §6991,  
19 and at relevant times was an "owner" or "operator" of UST's at a gas station on the Navajo  
20 Nation Reservation. Knight is or was the President, Director and CEO of NPM.; the President,  
21 CEO, Director, Treasurer and Secretary of Navajo Trails and from 1997 - 2001, the President  
22 and CEO of Sunwest Express. Knight's last known address is 2046 N. Almond Circle, Mesa,  
23 Arizona 85213.

24 7. Brown is a "person" within the meaning of RCRA Section 9001, 42 U.S.C. §6991,  
25 and at relevant times was an "operator" of UST's at a gas station on the Navajo Nation  
26 Reservation. Brown's last known address is 14414 N. 17<sup>th</sup> Place, Phoenix, Arizona 85022.

27 8. NPM is a corporation domiciled in Nevada and doing business in Arizona.

1 9. NPM is a "person" within the meaning of RCRA Section 9001, 42 U.S.C. §6991, and  
2 at relevant times was an "owner" or "operator" of UST's at a gas station on the Navajo Nation  
3 Reservation. NPM's last known place of business is P.O. Box 76, Paulden, Arizona 85334.

4 10. NPM filed a petition for reorganization under Chapter 11 of the United States  
5 Bankruptcy Code. *In the Matter of National Petroleum Marketing, Inc.*, Case No. 97-14374-  
6 PHX-GBN (Bankr. D. Az.) The Plan of Reorganization was approved on May 18, 2000, and  
7 the action was closed on March 20, 2003.

8 11. Sunwest Express is an Arizona corporation.

9 12. Sunwest Express is a "person" within the meaning of RCRA Section 9001, 42 U.S.C.  
10 §6991, and at relevant times was an "owner" or "operator" of UST's at a gas station on the  
11 Navajo Nation Reservation. Sunwest Express domestic address is 2046 N. Almond Circle,  
12 Mesa, Arizona 85213.

13 13. Navajo Trails is an Arizona corporation.

14 14. Navajo Trails is a "person" within the meaning of RCRA Section 9001, 42 U.S.C.  
15 §6991, and at relevant times was an "owner" or "operator" of UST's at a gas station on the  
16 Navajo Nation Reservation. Navajo Trails domestic address is 2046 N. Almond Circle, Mesa,  
17 Arizona 85213.

#### 18 GENERAL ALLEGATIONS

19 15. From at least March of 1999 through the present, Knight, both individually and  
20 through his affiliated companies, operated the SuperFuels gasoline service station (facility) in  
21 Tuba City, Arizona.

22 16. Knight was involved in the operation and ownership of the facility in that he  
23 participated in setting fuel prices, in determining how often fuel would be delivered and in  
24 receiving reports of facility operations.

25 17. Several employees at the facility recognized Knight as the owner or main boss.

26 18. Knight was President, CEO and/or Director of the corporations doing business as the  
27 SuperFuels facility at the time of the violations alleged in this Complaint.

1       19. Due to the nature of Knight's past and present relationships with and among the  
2 corporate defendants to this action, and his control over them such that the corporations were  
3 and are inseparable from Knight, and due to the fact that recognition of the corporate defendants'  
4 corporate forms would promote injustice, the interests of fairness, equity and public convenience  
5 call for Knight being found liable as an "owner" or "operator" of the "petroleum underground  
6 storage tanks" located at the facility, within the meaning of RCRA Section 9001, 42 U.S.C.  
7 §6991, and the governing regulations, based on a corporate veil piercing and/or alter ego theory  
8 of liability in addition to Knight's direct liability as an owner or operator of such tanks.

9       20. NPM was an additional owner or operator of the SuperFuels facility from at least 1995  
10 through at least January of 2001.

11       21. From at least November of 1998 through January of 2001, NPM's former subsidiary,  
12 Sunshine Western, was the named lessee for the SuperFuels facility property. Upon information  
13 and belief Sunshine Western merged into NPM in approximately 1995.

14       22. Knight, individually or through his other corporations, controlled, influenced and  
15 governed Sunshine Western, NPM, Sunwest Express and Navajo Trails.

16       23. Knight was the President, CEO, Director and sole shareholder of Sunshine Western  
17 until 1995 when Sunshine Western merged with NPM.

18       24. Knight has been the President, CEO and Director of NPM since the company's  
19 incorporation, with the exception of the time period from July 1997, to May 1998 including the  
20 period of the violations alleged in this complaint..

21       25. Knight has been the sole shareholder of NPM since the company's incorporation  
22 including the period of the violations alleged in this Complaint.

23       26. During the bankruptcy of NPM, Knight remained as President, had overall  
24 responsibility for and made decisions regarding the liquidation of NPM's assets.

25       27. On information and belief, Knight was the President of Sunwest Express from at least  
26 1995 until at least March of 1998.

1       28. Knight was the sole shareholder of Sunwest Express since the company's  
2 incorporation until at least March of 1998.

3       29. On information and belief, Knight was the sole shareholder of Sunwest Express during  
4 the period of the violations at issue in this action.

5       30. Knight held himself out as President of Sunwest Express in 2001.

6       31. Knight has been the President, CEO, Director, Secretary and Treasurer of Navajo  
7 Trails since the company's incorporation including the period of the violations alleged in this  
8 Complaint.

9       32. Knight was the sole shareholder of Navajo Trails from the company's incorporation  
10 until at least March of 2000 including the period of violations alleged in this Complaint.

11       33. There is common stock ownership of Sunshine Western, NPM, Sunwest Express and  
12 Navajo Trails.

13       34. Knight dominated Sunshine Western, NPM, Sunwest Express and Navajo Trails  
14 during the period of the violations at issue in this action and was in control of the activities at  
15 the SuperFuels facility during this time.

16       35. There is significant overlap in the ownership, officers, directors and personnel of  
17 NPM, Sunwest Express and Navajo Trails.

18       36. Knight has acted as the agent for service of process for Sunshine Western.

19       37. Knight has acted as the agent for service of process for NPM.

20       38. Knight has acted as the agent for service of process for Sunwest Express.

21       39. Knight has acted as the agent for service of process for Navajo Trails.

22       40. Earl Cook has acted as President and CEO of Sunwest Express and has been identified  
23 as a Director of Navajo Trails.

24       41. Earl Cook is also a general partner of Marquee Family Limited Partnership, the  
25 current owner of Navajo Trails.

26       42. Knight's wholly owned company, JKBJ General, LLC, is also a general partner of the  
27 Marquee Family Limited Partnership.

1       43. Knight and his children, including his daughter Vallie Lee Dodge, are limited partners  
2 of the Marquee Family Limited Partnership.

3       44. Knight's wife, Patricia Bliss Knight, is also a general partner of the Marquee Family  
4 Limited Partnership.

5       45. The Marquee Family Limited Partnership, in addition to owning Navajo Trails, also  
6 owns at least a partial interest in McConico Enterprises, LLC, which is the current owner of  
7 Sunwest Express, Inc.

8       46. Vallie Lee Dodge, Knight's daughter, has been employed by NPM, and, at times, was  
9 the company's sole employee.

10       47. An accounting firm owned by Vallie Lee Dodge, Control Your Accounting, performed  
11 bookkeeping, tax and personnel functions for NPM until at least January of 1998.

12       48. On information and belief, Vallie Lee Dodge had some role in directing certain  
13 operations at the SuperFuels facility.

14       49. Victor W. Riches, who formerly acted as legal counsel for Sunshine Western and  
15 NPM, has acted as the agent for service of process for Sunshine Western, Sunwest Express and  
16 Navajo Trails.

17       50. Victor W. Riches has also acted as a Director of NPM and Sunwest Express.

18       51. Victor W. Riches was also an incorporator of NPM and Sunwest Express.

19       52. Betty Hayes has acted as Secretary for both Sunwest Express and Navajo Trails.

20       53. Steve Strong has acted as Secretary for both NPM and Sunwest Express.

21       54. Steve Strong has also acted as Treasurer for NPM.

22       55. Steve Strong also does business in Williams, Arizona, under the fictitious business  
23 name of Sunwest Express.

24       56. Sunshine Western, NPM, Sunwest Express and Navajo Trails have all shared common  
25 office space, addresses and telephone numbers.

26       57. Sunshine Western, NPM and Navajo Trails have each used the corporate address of  
27 1140 S. Aviation Drive, Provo, Utah.



1       70. The Navajo Tribe's Tuba City Regional Business Development Office understood that  
2 Sunshine Western had changed its name to Navajo Trails, although they were really two  
3 different companies.

4       71. Navajo Trails, at times paid the rent for the SuperFuels facility lease site.

5       72. Sunwest Express also operated the SuperFuels facility.

6       73. Sunwest Express employed personnel at the SuperFuels facility.

7       74. Service and repairs at the SuperFuels facility were billed at various times to Sunshine  
8 Western, Sunwest Express and Navajo Trails.

9       75. Underground storage tank financial responsibility requirements for the SuperFuels  
10 facility, when complied with, were met at various times by insurance covering Sunwest Express  
11 and Navajo Trails.

12       76. Underground storage tank destruction certificates relating to the SuperFuels facility  
13 were issued to NPM.

14       77. There is such unity of interest and ownership between and among Knight, Sunshine  
15 Western, NPM, Sunwest Express and Navajo Trails that the separate personalities of the  
16 corporations and Knight, if any, no longer exist.

17       78. Knight transmitted correspondence to the United States Environmental Protection  
18 Agency about the November 1999 inspection and follow-up compliance on the letterhead of both  
19 Sunshine Western and Navajo Trails.

20       79. On information and belief, NPM operated a petroleum business in Arizona from at  
21 least 1992 through 2002 under the trade name "Sunshine Western, Inc."

22       80. Sunshine Western and NPM are respondents to a 1996 administrative order issued by  
23 the United States Environmental Protection agency. This order requires clean up of soil, surface  
24 and groundwater contamination emanating from the SuperFuels facility and another facility  
25 across the street operated by Thriftway Marketing Corporation.



81. The contamination emanating from the SuperFuels and Thriftway facilities threatens sacred lands and waters, including springs used for drinking water purposes, of both the Navajo Nation and the Hopi Tribe in this area.

82. Neither Sunshine Western nor NPM have been engaged in clean up activities at the SuperFuels facility for years.

83. Thriftway Marketing Corporation has undertaken responsibility for the clean up of the contamination emanating from the SuperFuels facility. To date, Thriftway has expended over \$2 million on these clean up efforts.

84. If the corporate defendants to this action prove financially unable to pay the penalties sought in this action, it would be unjust for Knight to avoid liability for these penalties. Therefore, the interests of justice justify piercing of the corporate veil and/or a finding that Knight is the alter ego of the corporate defendants in this action.

85. Brown was, in 1999, an employee of both Knight and Sunwest Express.

86. Brown also operated the SuperFuels facility during the period of the violations alleged in this Complaint.

87. Brown was, at relevant times, Secretary of Sunwest Express and agent for service of process for Sunshine Western and NPM.

88. Brown had direct involvement in, control over, and responsibility for the daily operations of the facility, including the UST's in that Brown was responsible for authorizing repairs on the UST's; Brown participated in the decisions on pricing of the fuel; Brown was the facility representative present at the November 1999 inspection and Brown provided additional information to EPA after the inspection.

89. The SuperFuels gas station is located at the Tuba City, Arizona intersection of Highways 160 and 264 within the Navajo Nation reservation. From at least March of 1999 through at least the present there were and are four operational underground storage tanks at the facility, used to dispense unleaded and diesel fuels for commercial sale.

1        90. From March of 1999 through the present, these four underground storage tanks  
2 contained and contain petroleum products and were and are subject to the federal environmental  
3 requirements found at RCRA Section 9001 *et seq.*, 42 U.S.C. §§6991-6991i, and 40 C.F.R. Part  
4 280.

5        91. Among other things, the federal underground storage tank requirements mandate that  
6 facilities operate their underground storage tanks in such a way as to minimize releases by  
7 complying with tank performance and operating standards and by using an approved leak  
8 detection method. In addition, facilities must report and investigate suspected releases. Owners  
9 or operators of petroleum underground storage tanks must also maintain financial responsibility  
10 for taking corrective action and for compensating third parties for injuries or damages caused  
11 by accidental releases from the underground storage tanks. RCRA Section 9003, 42 U.S.C.  
12 §6991b; 40 C.F.R. Part 280, Subparts B, C, D, E and H.

13        92. The federal underground storage tank requirements also provide that underground  
14 storage tank operators must furnish information to EPA when requested to do so. RCRA Section  
15 9005(a), 42 U.S.C. §6991d(a); 40 C.F.R. §280.34.

16        93. In November of 1999, the EPA inspected the SuperFuels facility, accompanied by  
17 representatives from the Navajo Nation Environmental Protection Agency (NNEPA) and Hopi  
18 Environmental Protection Office (Hopi EPO). During and after the inspection, the inspection  
19 team obtained evidence that the facility was and had been out of compliance with several  
20 provisions of federal law and regulations governing the management of underground storage  
21 tanks.

22        94. For instance, the inspection revealed that the facility owners or operators had not  
23 consistently provided adequate leak detection for their underground storage tank systems. At  
24 other times, when release detection revealed the possibility of releases, the facility operators  
25 failed to report or even to investigate those suspected releases. The inspection and follow-up  
26 correspondence with the facility owners or operators also revealed that financial responsibility  
27 requirements for the petroleum underground storage tanks had not been met.

1 95. After the inspection, EPA corresponded with the facility on a number of occasions  
2 regarding its compliance status. In September and October of 2002, information request letters  
3 were sent to John Knight, President of Sunshine Western and National Petroleum Marketing.  
4 These letters, which sought information regarding the operations of the underground storage  
5 tanks at the SuperFuels facility, went unanswered.

6 96. RCRA Section 9006(a), 42 U.S.C. §6991e(a), provides that, whenever on the basis  
7 of any information, EPA determines that any person has violated or is violating any requirement  
8 of Subtitle I of RCRA, the United States may file a civil action in federal district court to obtain  
9 appropriate relief.

10 97. Any person who violates a requirement of Subtitle I of RCRA, or fails to respond to  
11 a written request for information, shall be liable for a civil penalty of up to \$10,000 per day for  
12 each such violation occurring prior to January 30, 1997, and up to \$11,000 per day for each  
13 violation occurring after January 30, 1997, as provided by RCRA Section 9006(d)(2), 42 U.S.C.  
14 §6991e(d)(2) and the US EPA regulations codified at 40 C.F.R. Part 19.

15 **FIRST CLAIM FOR RELIEF**  
16 **(AGAINST DEFENDANTS KNIGHT, BROWN, SUNWEST EXPRESS,**  
17 **AND NAVAJO TRAILS)**  
18 **Failure to Conduct Corrosion Tests Every Three Years**

19 98. The allegations set forth in paragraphs 1 through 97 above are incorporated herein  
20 by reference.

21 99. The SuperFuels facility operators failed to conduct corrosion protection functionality  
22 tests for the four underground storage tanks at the facility at least every three years in accordance  
23 with 40 C.F.R. §280.31(b)(1) beginning in March of 1998, when the tests were due, until the  
24 tests were performed on or about November 15, 1999.

25 100. From at least March of 1999 through at least December of 1999, Sunwest Express  
26 was an "owner" or "operator" of the "petroleum underground storage tank systems" located at  
27 the SuperFuels facility in Tuba City, Arizona, within the meaning of RCRA Section 9001, 42  
28 U.S.C. §6991, and the governing regulations.

1 101. From at least March of 1999 through at least December of 1999, Navajo Trails was  
2 an "owner" or "operator" of the "petroleum underground storage tank systems" located at the  
3 facility, within the meaning of RCRA Section 9001, 42 U.S.C. §6991, and the governing  
4 regulations.

5 102. From at least March of 1999 through at least December of 1999, Brown was an  
6 "operator" of the "petroleum underground storage tanks" at the facility, within the meaning of  
7 RCRA Section 9001, 42 U.S.C. §6991, and the governing regulations.

8 103. From at least March of 1999 through at least December of 1999, Knight was an  
9 "owner" or "operator" of the "petroleum underground storage tank systems" located at the  
10 facility, within the meaning of RCRA Section 9001, 42 U.S.C. §6991, and the governing  
11 regulations.

12 104. By failing to conduct corrosion protection tests on the underground storage tanks  
13 every three years, Knight, Brown, Sunwest Express and Navajo Trails each violated RCRA  
14 Subtitle I and 40 C.F.R. §280.31(b)(1).

15 105. Knight, Brown, Sunwest Express and Navajo Trails are each liable for civil penalties  
16 of up to \$11,000 per tank per day for each violation pursuant to RCRA Section 9006(d)(2), 42  
17 U.S.C. §6991e(d)(2), and 40 C.F.R. §19.4.

18  
19 **SECOND CLAIM FOR RELIEF**  
**(AGAINST DEFENDANTS KNIGHT, BROWN, SUNWEST EXPRESS**  
**AND NAVAJO TRAILS)**  
20 **Failure to Report a Suspected Release Within 24 Hours**

21 106. The allegations set forth in paragraphs 1 through 105 above are incorporated herein  
22 by reference.

23 107. From March of 1999 until October of 1999, the Facility operators failed to report  
24 suspected releases in accordance with 40 C.F.R. §280.50(c) on three (3) separate occasions.

25 108. By failing to report suspected releases, Knight, Brown, Sunwest Express and Navajo  
26 Trails each violated RCRA Subtitle I and 40 C.F.R. §280.50(c).

1 109. Knight, Brown, Sunwest Express and Navajo Trails are each liable for civil penalties  
2 of up to \$11,000 per tank per day for each violation pursuant to RCRA Section 9006(d)(2), 42  
3 U.S.C. §6991e(d)(2), and 40 C.F.R. §19.4.

4 **THIRD CLAIM FOR RELIEF**  
5 **(AGAINST DEFENDANTS KNIGHT, BROWN, SUNWEST EXPRESS**  
6 **AND NAVAJO TRAILS)**

7 **Failure to Investigate a Suspected Release Within Seven Days**

8 110. The allegations set forth in paragraphs 1 through 109 above are incorporated herein  
9 by reference.

10 111. From March of 1999 until October of 1999, the Facility operators failed to  
11 investigate suspected releases within seven (7) days in accordance with 40 C.F.R. §280.52 on  
12 three (3) separate occasions.

13 112. By failing to investigate suspected releases within seven (7) days, Knight, Brown,  
14 Sunwest Express and Navajo Trails each violated RCRA Subtitle I and 40 C.F.R. §280.52.

15 113. Knight, Brown, Sunwest Express and Navajo Trails are each liable for civil penalties  
16 of up to \$11,000 per tank per day for each violation pursuant to RCRA Section 9006(d)(2), 42  
17 U.S.C. §6991e(d)(2), and 40 C.F.R. §19.4.

18 **FOURTH CLAIM FOR RELIEF**  
19 **(AGAINST DEFENDANTS KNIGHT, BROWN, SUNWEST EXPRESS**  
20 **AND NAVAJO TRAILS)**

21 **Failure to Monitor Tanks Every Thirty (30) Days**

22 114. The allegations set forth in paragraphs 1 through 113 above are incorporated herein  
23 by reference.

24 115. From April of 1999 through October of 1999, the Facility operators failed to conduct  
25 monthly release detection monitoring in accordance with 40 C.F.R. §280.41(a) on thirty-two (32)  
26 separate occasions.

27 116. By failing to conduct monthly release detection monitoring, Knight, Brown, Sunwest  
28 Express and Navajo Trails each violated RCRA Subtitle I and 40 C.F.R. §280.41(a).

1 117. Knight, Brown, Sunwest Express and Navajo Trails are each liable for civil penalties  
2 of up to \$11,000 per tank per day for each violation pursuant to RCRA Section 9006(d)(2), 42  
3 U.S.C. §6991e(d)(2), and 40 C.F.R. §19.4.

4 **FIFTH CLAIM FOR RELIEF**  
5 **(AGAINST DEFENDANTS KNIGHT, BROWN, SUNWEST EXPRESS**  
6 **AND NAVAJO TRAILS)**  
7 **Failure to Utilize Valid Release Detection Method**

8 118. The allegations set forth in paragraphs 1 through 117 above are incorporated herein  
9 by reference.

10 119. In November and December of 1999, the Facility operators, on eight (8) separate  
11 occasions, failed to utilize a valid release detection method in accordance with 40 C.F.R.  
12 §280.41(a).

13 120. By failing to utilize a valid release detection method, Knight, Brown, Sunwest  
14 Express and Navajo Trails each violated RCRA Subtitle I and 40 C.F.R. §280.41(a).

15 121. Knight, Brown, Sunwest Express and Navajo Trails are each liable for civil penalties  
16 of up to \$11,000 per tank per day for each violation pursuant to RCRA Section 9006(d)(2), 42  
17 U.S.C. §6991e(d)(2), and 40 C.F.R. §19.4.

18 **SIXTH CLAIM FOR RELIEF**  
19 **(AGAINST DEFENDANTS KNIGHT, BROWN, SUNWEST EXPRESS**  
20 **AND NAVAJO TRAILS)**  
21 **Failure to Provide Adequate Release Detection for Piping**

22 122. The allegations set forth in paragraphs 1 through 121 above are incorporated herein  
23 by reference.

24 123. On or about March of 1999, the Facility operators, on three (3) separate occasions,  
25 failed to provide an adequate release detection method for piping in accordance with 40 C.F.R.  
26 §280.41(b)(1).

27 124. By failing to provide an adequate release detection method for piping, Knight,  
28 Brown, Sunwest Express and Navajo Trails each violated RCRA Subtitle I and 40 C.F.R.  
§280.41(b)(1).

1 125. Knight, Brown, Sunwest Express and Navajo Trails are each liable for civil penalties  
2 of up to \$11,000 per tank per day for each violation pursuant to RCRA Section 9006(d)(2), 42  
3 U.S.C. §6991e(d)(2), and 40 C.F.R. §19.4.

4 **SEVENTH CLAIM FOR RELIEF**  
5 **(AGAINST DEFENDANTS KNIGHT, BROWN, SUNWEST EXPRESS**  
6 **AND NAVAJO TRAILS)**  
7 **Failure to Maintain Financial Responsibility**

8 126. The allegations set forth in paragraphs 1 through 125 above are incorporated herein  
9 by reference.

10 127. Pursuant to 40 C.F.R. § 280.93(a), owners or operators of petroleum underground  
11 storage tanks must demonstrate that they have an approved financial responsibility mechanism  
12 for taking corrective action and for compensating third parties for bodily injury and property  
13 damage caused by accidental releases arising from the operation of the UST's. Under  
14 § 280.91(d), Knight, Brown, Sunwest Express and Navajo Trails were required to comply with  
15 this financial responsibility requirement no later than at least December 31, 1993.

16 128. From at least March of 1999 through at least November 19, 1999, Knight, Brown,  
17 Sunwest Express and Navajo Trails failed to meet the financial responsibility requirements of  
18 40 C.F.R. § 280.93(a).

19 129. By failing to meet the financial responsibility requirements for petroleum  
20 underground storage tanks, Knight, Brown, Sunwest Express and Navajo Trails each violated  
21 RCRA Subtitle I and 40 C.F.R. § 280.93(a).

22 130. Knight, Brown, Sunwest Express and Navajo Trails are each liable for civil penalties  
23 of up to \$11,000 per tank per day for each violation pursuant to RCRA Section 9006(d)(2), 42  
24 U.S.C. § 6991e(d)(2), and 40 C.F.R. § 19.4.

25 **EIGHTH CLAIM FOR RELIEF**  
26 **(AGAINST DEFENDANTS KNIGHT AND NPM)**  
27 **Failure to Respond to Information Request Letters**

28 131. The allegations set forth in paragraphs 1 through 130 above are incorporated herein  
by reference.

1 132. Knight and NPM failed to respond to two information request letters -- which were  
2 sent by EPA in September and October of 2002, respectively -- as required by RCRA Section  
3 9005, 42 U.S.C. §6991d, and 40 C.F.R. §280.34.

4 133. By failing to provide a response to information request letters, Knight and NPM each  
5 violated RCRA Subtitle I and 40 C.F.R. §280.34.

6 134. Knight and NPM are each liable for civil penalties of up to \$11,000 per day for each  
7 violation pursuant to RCRA Section 9006(d)(2), 42 U.S.C. §6991e(d)(2), and 40 C.F.R. §19.4.

8 **RELIEF REQUESTED**

9 **WHEREFORE**, Plaintiff, the United States of America, respectfully requests that this  
10 Court grant the following relief:

- 11 a. Find Knight, Brown, NPM, Sunwest Express and Navajo Trails liable for the  
12 violations as alleged herein;
- 13 b. Award civil penalties to Plaintiff of up to \$11,000 per tank per day for violations of  
14 RCRA;
- 15 c. Award Plaintiff its costs and disbursements for this action; and
- 16 d. Grant such other and further relief as this Court deems appropriate.

17 Respectfully submitted this 30<sup>th</sup> day of March, 2004.

18 PAUL K. CHARLTON  
19 United States Attorney  
20 District of Arizona

21 SUE A. KLEIN  
22 Assistant U.S. Attorney

23 BRUCE S. GELBER, Chief  
24 Environmental Enforcement Section  
25 Environment & Natural Resources  
26 U.S. Department of Justice  
27  
28